IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 33 of 1990
Date of decision 9.5.2007

The Commissioner of Income tax, Patiala .. Appellant

Versus

M/s Punjab State Industrial Development Corp. Ltd. Chandigarh
.. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.SK Garg Narwana, Advocate for the appellant
Mr. Rajesh Garg, Advocate for the respondent.

M.M.Kumar, J.

On the directions issued by this Court in Income tax Case No. 69 of 1983 on 25.8.1988, the Tribunal was directed to refer the following question of law for the opinion of this Court:

" Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the assessee corporation was entitled to the deduction of the sum of Rs.207428/- for the assessment year 1977-78?"

The facts are not in dispute. The assessee is a corporation which is registered as a company under the Companies Act,1956 and is known as Punjab State Industrial Development Corporation (for brevity 'the Corporation'). The Corporation entered into an agreement with M/s Oswal Woolen Mills Ltd. (for brevity 'the company') for profitable implementation and operation of steel billets project and purposes incidental/ancillary there to. It is appropriate to mention that the Corporation had received from the Government of India a licence for carrying on business for the manufacture

of 50000 tonnes of steel billets per annum. The company had obtained land from the State Government for the project at Dhandri Kalan near Ludhiana. According to the terms of the agreement entered on 2.4.1973 it was inter-alia provided that the equity capital of the company was to be issued, subscribed, allotted paid for and held in such a manner so as to maintain a specified and particular proportion of voting power between the parties. According to clause 3 of the agreement the parties undertook to accept and abide by any condition which may be imposed by Central Financial Institutions relative to the provision of long term finance to the company for the implementation of the project and such conditions was to be considered to form part of this agreement as if specifically incorporated. The parties to the agreement were also held entitled to specific performance of the terms of the agreement including the obligation as to the exercise of voting rights. The collaborators accordingly floated a company known as Punjab Con-cast Steels Ltd.

For the assessment year under consideration the return of income declaring a loss of Rs. 4,91,429/- was filed on 20.6.1979 which was revised on 27.12.1979 declaring the loss of Rs. 4,35,127/-. The Corporation had advanced Rs. 6,65,242/- to M/s Punjab Con-cast Steels Ltd. during the accounting period relating to the assessment year 1972-73. An amount of Rs. 9,50,000/- stood advanced during the assessment year 1973-74 and Rs.15,98,000/- for the assessment year 1974-75 which constituted brought forward amount of Rs. 7,00,000/- and fresh loans of Rs. 8,98,000/-. The assessee received interest for the afore-mentioned three assessment years amounting to Rs. 64,724/-, Rs. 34,136 and Rs. 1,08,567/-. The amount of interest was assessed in the hands of the assessee in the respective

assessment years by way of interest received on loans and advances. However, the assessee had to refund this sum of Rs. 2,07,428/- on account of the instructions issued by the Industrial Financial Corporation (IFCI) to the effect that All India Financial Institutions, as a matter of policy, did now allow the promoters to charge interest on the amount that may be advanced by them to the companies promoted by them for the implementation of the project till such time their equity contribution is completed. It is thus obvious that the loan was advanced by the Corporation to Punjab Concast Steels Ltd. and interest was charged thereon against the policy of IFCI and All India Financial Institutions. Accordingly the Board of Directors of the Corporation had agreed to refund the amount which was claimed as deduction in the computation of the total income for the assessment year under consideration. The Inspecting Assistant Commissioner of Income Tax had considered the issue whether an amount of Rs. 2,07,428/- was to be treated as expenditure or loss for the assessment year under consideration. He opined that it was neither loss nor any expenditure for the year under consideration because the amount had nothing to do with the income and expenditure of the year in question. The deductions claimed by the assessee of the afore-mentioned amount were therefore not allowed.

On appeal to the Commissioner of Income Tax, the order of the Inspecting Assistant Commissioner was upheld. On further appeal to the Income Tax Appellate Tribunal, the issue was decided in favour of the Corporation- assessee. The view of the Tribunal is discernible from the perusal of para 11 which reads as under:

> " In the case of Sasson J. David and Co., referred supra the Supreme Court observed that ordinarily, it is for the assessee to

decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits the assessee can claim deduction even though there was no compelling necessity to incur such expenditure. The Allahabad High Court in the case of J.K.Bankers, cited supra, observed that an assessee who agreed to a reduction of its rate of commission with retrospective effect in order to continue the business relationship in terms of a subsequent agreement acted for the reasons of commercial expediency. In the case of the assessee on the facts and circumstances of the case it is clear that the amount to be refunded was on commercial expediency. Since the books of accounts of the assessee were open till 12.10.1979 and a decision to refund the amount had been taken by the Board of Directors earlier the adjustment entries made by the assessee entitled it to the deduction claimed. Therefore, in our considered opinion, the amount had to be allowed as a deduction in computing the total income of the assessee. This ground of the assessee is allowed. Since we have accepted the claim of the assessee for the deduction of the entire amount from the total income for the year under appeal, we do not consider it necessary to deal with ord-well upon other contentions taken by the parties before us. He may also observe in passing that the sum of Rs.207428/- refunded to Punjab Concast Steels Ltd. Has already been taxed as revenue receipts

in their hands in the accounting year 1975-76."

After hearing learned counsel we find that the view taken by the Tribunal does not suffer from any legal infirmity warranting interference of this Court because it was on account of the objection raised by IFCI particularly in view of Clause 3 of the agreement the Corporation had no other option but to refund the amount. The books of account of the assessee were open when the decision to refund the amount was taken and therefore the assessee has been rightly held entitled to make adjustment entries in the books of account and make the claim accordingly. We further find that very substantial support to the afore-mentioned view from the judgement of the Hon'ble Supreme Court in the case of Sassoon J.Davi and Co. P. Ltd v. CIT (SC) (1979) 118 ITR 261.

For the reasons stated above, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

9.5.2007
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